FILED
FEB 9 1946
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945.

No. 827

EDITH VANDEVOIR, PETITIONER,

vs.

SOUTHEASTERN GREYHOUND LINES.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

ERNEST M. WRIGHT,
FRANK R. MILLER,
ERNEST M. CAUSEY,
HOMER B. AIKMAN,
Counsel for Petitioner.

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To the Honorable the Supreme Court of the United States:

The petitioner, Edith Vandevoir, respectfully shows to this honorable court:

A.

Summary Statement of Matter Involved.

This action was brought to recover damages for personal injuries sustained by petitioner while a passenger on a bus of respondent. The injury occurred in the state of Tennessee.

Petitioner is a citizen of Indiana, purchased her transportation in Indiana and became a passenger of respondent in Indiana for transportation to a point outside Indiana.

Respondent is a corporation organized under the law of Kentucky; but transacting an extensive business in Indiana as an interstate carrier by virtue of a required certificate of

authority from Indiana, and has a designated resident agent in Indiana for the service of process.

Respondent filed motion for summary judgment on the ground it was a nonresident of the state of Indiana and the action, therefore, barred by an Indiana limitation statute (R. 5 and 12). After hearing on stipulation of facts, documentary and oral evidence, the trial court made its finding and conclusions (R. 26-42), and entered judgment against petitioner (R. 42). From this judgment petitioner appealed to the Circuit Court of Appeals of the Seventh Circuit and the summary judgment was affirmed. (R. 57, 58).

The trial court and the Circuit Court of Appeals decided respondent was a nonresident of Indiana because of the nonmigration doctrine.

B.

Jurisdiction.

1.

Petitioner contends this court has jurisdiction to review under Title 28, Section 347, Clause (a) of the Judicial Code, 48 Stat. 926; and Rule 38, Clause 5, of this court.

2.

The date of the judgment to be reviewed is November 30, 1945 (R. 57, 58).

3.

The decision conflicts with the following:

a.

Sixth Circuit. (Baltimore & O. R. Co. v. Reed, 223 Fed. 689, 697).

b.

Seventh Circuit (Dodge Mfg. Co. v. Patten, 60 Fed. 2d 676).

c.

Second Circuit. (Moss v. Atlantic Coast Line R. Co., 149 Fed. 2d 701).

d.

United States Supreme Court. (Woodworth, 111 U.S. 138; Taylor, 266 U.S. 200; Transportation Company, 292 U.S. 511; Neirbo, 308 U.S. 165; Shoe Company, 90 L. ed. 109; and Williams, Jan. 7, 1946).

e.

State policy as declared by legislative enactment on equality as between domestic and foreign corporations. (Burns Indiana Revision 1933, Section 25-302, Volume 6, page 60.)

State policy as declared by legislative enactment against fictions of law. (Burns Indiana Revision 1933, Section 2-1050, Volume 2, page 188; Section 49-1417, Volume 10, page 98).

f.

Applicable local decisions. (The New Albany and Salem R. R. Co. v. Haskell, 11 Ind. 301; The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company v. The City of Indianapolis, 147 Ind. 292; The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company v. Harden, Treasurer, 137 Ind. 486).

g.

Weight of authority:

Louisville etc. Co. v. Pool, (1895) 72 Miss. 487; 16 So. 753;

McConnell v. Caribbean Petroleum Co., (1938) 278 N. Y. 189, 195; 15 N.E. 2d 573, 575;

Comey v. United Surety Co., (1916) 217 N. Y. 268, 274; 111 N.E. 832, 834;

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Thompson v. Texas Land & Cattle Co., (Texas-1893) 24 S.W. 856, 857.

C.

Question Presented.

The question presented is whether respondent having qualified to transact business in Indiana and having a resident

agent for the service of process, all as required by Indiana law, and transacting extensive business in virtue thereof, is a nonresident of Indiana within the meaning of the second clause of Section 2-606, Burns 1933 Revised Statutes of Indiana, Volume 2, Page 74. That section including its published heading is as follows:

> "*Nonresidence of defendant* or absence on public business not considered—*Exception* as to *nonresidence.*—The time during which the defendant is a *nonresident* of the state *or* absent on public business shall not be computed in any of the periods of limitation; but when a cause has been fully barred by the laws of the place where the defendant *resided*, such bar shall be the same defense here as though it had arisen in this state: Provided, That the provisions of this section shall be construed to apply only to causes of action arising without this state." (Italics supplied).

D.

Reasons for Writ.

Petitioner assigns as reasons for the writ the following:

I.

The Circuit Court of Appeals rendered a decision in conflict with a decision of the Sixth Circuit (Baltimore & O. R. Co. v. Reed, 223 Fed. 689, 697); also in conflict with a decision of its home circuit (Dodge Mfg. Co. et al. v. Patten, 60 Fed. 2d 676), which latter decision this court pronounced sound in the Neirbo Case, 308 U. S. 165; also, in conflict with a decision of the Second Circuit (Moss v. Atlantic Coast Line R. Co., 149 Fed. 2d 701).

II.

The Circuit Court of Appeals based its conclusion on certain decisions in conflict with the latest expressions of this court in the Neirbo Case, 308 U. S. 165, Shoe Company, 90 L. ed. 109, Williams, Jan. 7, 1946; also in conflict with previous decisions of this court; and undertakes to reestablish a discarded doctrine as to corporations, which makes it of great importance that this Court take jurisdiction and set the question at rest.

III.

The Circuit Court of Appeals has decided an important question of local law in conflict with state policy as declared by applicable local statutes against discrimination and fiction (Burns Revision of 1933, Section 25-302, Vol. 6, page 60; Section 2-1050, Vol. 2, page 188; Section 49-1417, Vol. 10, page 98); and likewise in conflict with applicable local decisions; and in conflict with the great weight of authority on limitation statutes as disclosed by state court decisions from Mississippi, New York, Missouri, Illinois, Iowa, Montana, Oklahoma, Tennessee, and Texas. The supporting brief carries citation to these authorities.

WHEREFORE your petitioner respectfully prays a writ of certiorari under the seal of this court directed to the United States Circuit Court of Appeals for the Seventh Circuit commanding the said court to certify and send to this court a full and complete transcript of the record of all proceedings of the said Circuit Court of Appeals in the said cause of Edith Vandevoir v. Southeastern Greyhound Lines, being Cause No. 8758 of said court, to the end that said case may be reviewed and determined by this court as provided by the Judicial Code and that your petitioner may have such other or further relief in the premises as this court may deem appropriate and

that the judgment of the said Circuit Court of Appeals in said cause be reversed by this honorable court.

EDITH VANDEVOIR,

Petitioner.

By: ERNEST M. WRIGHT,

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